

DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE:

B-184729

DATE:

MAR 1 1976

MATTER OF:

Dependents - Renewal Agreement Travel

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98488**DIGEST:**

When dependents of an employee are not permitted to accompany him to a post of duty outside the continental United States, or in Hawaii or Alaska, and are transported to an alternate location under the authority of 5 U. S. C. § 5725, the employee is entitled to transportation expenses for those dependents incident to his own entitlement to renewal agreement travel under 5 U. S. C. § 5725(a) based on the cost of travel between the alternate location and the employee's place of actual residence at the time of appointment or transfer to the post of duty.

The Assistant Secretary of the Air Force, Manpower and Reserve Affairs, as a member of the Per Diem, Travel and Transportation Allowance Committee, has requested an opinion concerning the renewal agreement travel entitlement of employees' dependents who are located at a place other than the employees' duty station (hereinafter referred to as their alternate location) under the authority of 5 U. S. C. § 5725 (1970).

We are told that the Air Force has certain employees whose permanent duty stations are at various remote sites in Alaska. As dependents are not permitted to accompany the employees to those remote sites, they are instead authorized transportation to alternate locations under the following authority contained at 5 U. S. C. § 5725 (1970):

"§ 5725. Transportation expenses; employees assigned to danger areas.

"(a) When an employee of the United States is on duty, or is transferred or assigned to duty, at a place designated by the head of the agency concerned as inside a zone--

"(1) from which his immediate family should be evacuated; or

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"(2) to which they are not permitted to accompany him;

because of military or other reasons which create imminent danger to life or property, or adverse living conditions which seriously affect the health, safety, or accommodations of the immediate family. Government funds may be used to transport his immediate family and household goods and personal effects, under regulations prescribed by the head of the agency, to a location designated by the employee. When circumstances prevent the employee from designating a location, or it is administratively impracticable to determine his intent, the immediate family may designate the location. When the designated location is inside a zone to which movement of families is prohibited under this subsection, the employee or his immediate family may designate an alternate location.

"(b) When the employee is assigned to a duty station from which his immediate family is not excluded by the restrictions in subsection (a) of this section, Government funds may be used to transport his immediate family and household goods and personal effects from the designated or alternate location to the duty station."

While 5 U. S. C. § 5725(b) (1970), above, authorizes dependents to rejoin the employee when the latter is assigned to a duty station from which his immediate family is not excluded, it does not specifically address the subject of dependents' transportation for the purpose of joining the employee to take home leave pursuant to his execution of a renewal agreement.

In view of the foregoing and in the absence of specific statutory or regulatory authority, the following questions are submitted for an advance decision:

"(a) Incident to the renewal agreement travel of an employee from a restricted station (from which dependents are excluded) and whose dependents

are residing at an alternate location, may transportation be furnished the dependents at Government expense from their alternate location to the employee's place of actual residence and return to the alternate location?

"(b) If the answer to question (a) is in the negative, what is the measure of entitlement in regard to travel of the dependents at Government expense?"

Round-trip transportation for employees and their dependents in connection with home leave is authorized by 5 U. S. C. § 5728(a) (1970), the language of which provides for travel of the employee and his immediate family "from his post of duty outside the continental United States to the place of his actual residence at the time of appointment or transfer to the post of duty." Subsection 5728(a) provides in its entirety as follows:

"§5728. Travel and transportation expenses; vacation leave.

"(a) Under such regulations as the President may prescribe, an agency shall pay from its appropriations the expenses of round-trip travel of an employee, and the transportation of his immediate family, but not household goods, from his post of duty outside the continental United States to the place of his actual residence at the time of appointment or transfer to the post of duty, after he has satisfactorily completed an agreed period of service outside the continental United States and is returning to his actual place of residence to take leave before serving another tour of duty at the same or another post of duty outside the continental United States under a new written agreement made before departing from the post of duty."

The Air Force points out that a reading of the two above-quoted authorities leaves unresolved the question of whether dependents assigned to an alternate location under 5 U. S. C. § 5725 (1970) are entitled to transportation in connection with an employee's renewal agreement travel inasmuch as they are unable to comply with the requirements of 5 U. S. C. § 5728(a) (1970) that their travel originate

from the employee's post of duty. Nonetheless, that Department is of the opinion that such dependents should be regarded as entitled to round-trip renewal agreement transportation originating and terminating at the alternate location, given the authority of 5 U. S. C. § 5725 (1970) for initially locating them at and ultimately returning them from that location.

At the time the language of 5 U. S. C. § 5725 (1970), authorizing transportation of dependents to an alternate location, was adopted as section 1 of Pub. L. No. 81-830, 64 Stat. 985, September 23, 1950, there was no provision for round-trip transportation for any employee or his dependents for home leave purposes. Hence, the legislative history of 5 U. S. C. § 5725 (1970) is understandably silent on the subject. Four years later Pub. L. No. 83-737, 68 Stat. 1008, August 31, 1954, was enacted and for the first time provisions were made for returning an employee stationed outside the continental United States, including one stationed in Alaska, and his dependents to their actual place of residence at time of appointment upon the employee's completion of an agreed period of service.

In the legislative hearings and reports that preceded enactment of Pub. L. No. 83-737 there is no allusion made to the matter of the renewal agreement travel entitlement of the relatively small class of dependents residing at alternate locations under the authority of 5 U. S. C. § 5725 (1970). Rather, the legislative preoccupation was with the inefficiencies and inequities of the situation that theretofore had pertained with respect to an employee's arrangements for taking home leave. Prior to enactment of Pub. L. No. 83-737 the law provided for transportation of an employee and his dependents to their place of actual residence only upon the employee's separation from the service. See S. Report No. 1944, 83d Cong., 2d Sess. 2 (1954), and H. R. Report No. 2096, 83d Cong. 2d Sess. 3 (1954).

A discussion of the method by which, prior to enactment of Pub. L. No. 83-737, an employee could obtain return transportation to his actual residence for himself and his dependents is provided in the following excerpt from the Statement by Robert M. Mangan, Office of Civilian Personnel, Department of the Army, appearing at the Hearings on H. R. 179, Before a Subcommittee of the Committee on Government Operations, House of Representatives, 83d Cong., 2d Sess. 13 and 14 (1954):

"Since an employee may return to the continental United States only for absolute separation, he must

resign his position in order to return home, even though he may fully intend to perform another period of service in the same overseas area. This involves a sizable administrative burden because the paper processes of separation, final salary payment, tax adjustments on lump-sum leave payment, reappointment, security clearances, and so forth, must be followed. In addition, in Hawaii, Puerto Rico, and the Canal Zone, permanent civil-service employees who return to the continental United States lose their permanent retention rights. This occurs because separation is required, and the Supplemental Appropriation Act, 1952, as amended (the Whitten amendment), prohibits permanent reinstatement.

* * * * *

"Household goods and personal effects are returned to the continental United States even though the employee plans to reenter employment after his home visit. In many cases, experienced and valuable employees are lost from Government employment as a result of these requirements, and the departments must then resort to recruitment, transportation, and orientation of new persons--at greatly increased expense to the Government. The resultant costs of recruiting new employees, and in most instances costs of shipment of household goods from some point in the continental United States to the overseas post, must again be paid.

"There is neither logic nor economy in this practice. It is a gross understatement to say that the Department would normally much prefer to grant a period of leave for return to the United States and to pay the travel attendant thereto."

In enacting Pub. L. No. 83-737, Congress sought to eliminate the administrative burden and personal inconvenience to the employee of requiring him to resign his position abroad in order to obtain Government transportation for himself and his family to return to the place of his actual residence in order to take leave. It was felt that the language of that statute would, in addition, help the Government to

retain in its overseas employment those experienced individuals who would willingly remain overseas if occasionally allowed to return for visits with family and friends. Because Pub. L. No. 83-737 is remedial in nature, its provisions have been liberally interpreted to effectuate the congressional purpose.

While 5 U. S. C. § 5728(a) authorizes payment of the expense of transporting an employee and his dependents "to the place of his actual residence at the time of appointment or transfer to the post of duty," upon the employee's completion of an agreed tour of duty, the regulations implementing this provision in fact permit an employee and his dependents to travel to an alternate destination, limiting the amount of their entitlement based on travel to the place of actual residence. Federal Travel Regulations (FPMR 101-7) para. 2-1.5h(2)(c) (May 1973) thus provides for travel to an alternate destination as follows:

"c. Alternate destination. An employee and his family may travel to a location in the United States, its territories or possessions, Puerto Rico, the Canal Zone, or another country in which the place of actual residence is located other than the location of the place of actual residence; however, an employee whose actual residence is in the United States must spend a substantial amount of time in the United States, its territories or possessions, Puerto Rico, or the Canal Zone incident to travel under 2-1.5h to be entitled to the allowance authorized. The amount allowed for travel and transportation expenses when travel is to an alternate location shall not exceed the amount which would have been allowed for travel over a usually traveled route from the post of duty to the place of actual residence and for return to the same or a different post of duty outside the conterminous United States as the case may be."

Legislation similar to 5 U. S. C. § 5728(a) (1970) but applicable to officers and employees of the Foreign Service has likewise been viewed as subject to liberal construction. Subsection 1136(2) of title 22, of the United States Code (1970), provides that the Secretary of State may, under such regulations as he shall prescribe, pay "the travel expenses of the members of the family of an officer or employee of the Service when * * * accompanying him on authorized home leave." This language would appear to authorize payment of travel expenses only where the employee is physically accompanied

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by his dependents. Yet, in B-164442, June 12, 1968, we recognized that it is not always possible for the employee and his dependents to travel together. That decision involved the home leave travel entitlement of a Foreign Service employee who had designated Arlington, Virginia, as the safehaven address of his dependents who were not permitted to reside with him in Saigon. We there indicated that the employee was entitled to home leave travel expenses for his dependents based on the cost of their transportation from the safehaven location to the place to which they were entitled to travel for the purpose of taking home leave.

We believe that the situation of dependents residing at an alternate location under authority of 5 U.S.C. § 5725 (1970) warrants a similarly liberal construction of the round-trip renewal agreement travel authority of 5 U.S.C. § 5728(a) (1970). An employee stationed at a remote or other location from which his dependents are excluded has as great a need as any employee assigned abroad to return to his place of residence or other destination in order to take leave to which he is entitled. An employee in this situation, however, has an especially great need to be reunited with his family during such leave period. Were transportation for his dependents from their alternate location not authorized by 5 U.S.C. § 5728(a), such employee would be required to separate or transfer to a less rigorous post of duty to obtain Government-financed transportation for his family. In the case of an employee who is willing to be located at an undesirable post of duty for which recruitment is difficult and who is willing to be separated from his family for long periods, the absurdity of requiring his severance of Government employment in order to be reunited with his family is obvious. The reasons that supported enactment of Pub. L. No. 83-737 even more strongly commend its interpretation to cover the case in question. For this reason we find that an employee whose dependents reside at an alternate location under authority of 5 U.S.C. § 5725 (1970) is entitled to round-trip transportation for those dependents incident to his own renewal agreement travel notwithstanding that their point of departure and return is that alternate location rather than the employee's post of duty.

In such cases, the amount of entitlement for dependent travel is not limited on the basis of the cost of travel from the employee's post of duty to his place of actual residence, but rather is limited to the cost of travel from the alternate location to the place of actual residence. We recognize that there will be instances in which the dependents' alternate location is a greater distance from the actual

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residence than is the employee's post of duty. Unlike in the situation of dependent travel, generally, 5 U. S. C. § 5725(b) does not limit the return transportation entitlement of dependents at alternate locations to the amount payable for travel from the employee's post of duty. The lack of such limitation is a recognition of the fact that the dependents' location away from the employee is not the result of the family's choice but of the Government's need for the employee's services at a place where, for reasons of health or safety or otherwise, he may not be accompanied by his family. This same consideration pertains with respect to travel for home leave purposes. The Government's needs and not the family's decision is responsible for the fact that the employee's dependents are located at a place more distant than the employee from the family's actual residence. We therefore see no basis to limit entitlement for dependents' renewal agreement travel to the amount payable in connection with travel between the employee's post of duty and place of actual residence.

Accordingly, question 1 is answered in the affirmative. In view of the affirmative answer to question 1 no answer is required for question 2.

P. F. MILLER

**Comptroller General
of the United States**